

To:

The Honorable Judge Martin Glenn
United States Bankruptcy Court Southern District of New York
Alexander Hamilton U.S. Custom House
One Bowling Green, Courtroom No. 213
New York, New York 10004

From:

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In re Celsius Network et al.
Case Number: 22-10964

July 18, 2022

Dear Judge Glenn,

I am a beneficial owner of two Celsius accounts, one in my name (Celsius ID ending -5b9a) and one in the name of an LLC I set up for my family's benefit (Celsius ID ending -216f). I am a US citizen and an accredited investor. I have never borrowed from Celsius. My funds were deployed on Celsius to earn yield. At the time Celsius paused withdrawals in mid-June, the total value across both accounts, expressed in US Dollar terms, was approximately \$2,500,000. The bulk of the value is held in Bitcoin (BTC); I have about 100 BTC across the two Celsius accounts. Some Ethereum (ETH) and other assets make up the remainder.

In my day-to-day life, I am a technology and life sciences entrepreneur and investor. I attended Harvard Law School, where I have since taught for some years in the fields of privacy and venture capital. After law school, I clerked for Chief Judge Danny J. Boggs of the Sixth Circuit Court of Appeals in the 2005-2006 term, but I am not a lawyer; I never took the bar, as my mother reminded me many times.

I first signed up as a customer on the Celsius platform in 2019. In the course of my multi-year relationship with Celsius as a depositor, I had occasion not only to follow their public statements about their capital strengths but also to correspond directly with senior executives, including CEO Alex Mashinsky. I also did business with Mr. Mashinsky directly, buying a lump of CEL token from him on an Over-the-Counter (OTC) basis in October 2020.

By now you will be well aware that Mr. Mashinsky represented many times over the years, in public statements such as webinars, that Celsius was in a position of excellent financial health. You may also be interested to know that he made similar representations privately. For example, I sent him an email in June 2021 asking “Of course I read the rumors that Celsius has been ‘endlessly rehypotheating.’ Please tell me (us): are we safe with Celsius? You guys solid? Please give us a good, clear signal.” He replied the next day saying “Yes you are safe. We are profitable and have no losses.”

In some practical sense, the inaccuracies and misrepresentations — accidental or intentional — by Mr. Mashinsky and the Celsius team on these important matters of diligence are so much “water under the bridge.” I highlight this history chiefly because I believe it may influence the Court’s thinking on how to evaluate Celsius’s plans for recovery.

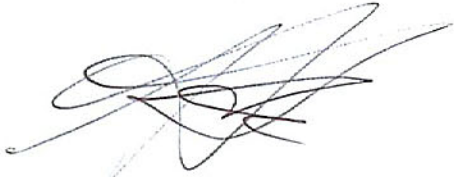
My chief concern is this: I hope the Court will not allow Celsius to repay its depositors in US Dollars unless the depositors specifically agree to receive the US Dollar (USD) equivalent of their crypto assets. In other words, I hope the Court will require Celsius to repay depositors “in kind” in the forms of crypto they deposited. I suspect that Mr. Mashinsky and the Celsius team and counsel may petition the Court to allow them to repay their crypto-held creditors in USD in a cynical ploy that would benefit, over time, some subset of Celsius stakeholders at the expense of Celsius crypto depositors.

As you are no doubt aware, the crypto market is perceived to be in a bit of a so-called “Crypto Winter” at the moment. Based on past performance, the current episode of “Crypto Winter” will probably subside soon enough. I believe there is a strong case to be made that crypto assets — which are very volatile — will appreciate in value substantially in the coming years. I suspect the Celsius team shares this belief (as do most crypto-industry parties.) The Celsius bankruptcy process may take quarters or years to unfold. If it does, the Celsius team may cynically benefit from paying off its depositors in USD at 2022 prices while reaping the benefits of further “upside” arising from crypto appreciation in later years. In such a scenario, Celsius could “freeze” the calculation of the value of crypto at the time of the “Pause,” at the time of its bankruptcy petition, or perhaps at some later time it proposes and then repay, perhaps in 2023 or 2024 or later, depositors in USD (at June-July 2022 prices) even while enjoying the premium value of higher Bitcoin or Ethereum or other crypto prices. If that happens, Celsius, having made many misrepresentations to its depositors and the public, and having declared bankruptcy after its business reality caught up with it, could then, so to say, “laugh all the way to the bank.” This would be, at the very least, a shame.

In light of Mr. Mashinsky’s easily provable and rather spectacular record of misrepresentations about the conditions and business practices of his company, I believe any petition by Celsius to the Court to permit the company to repay depositors in USD should be met with the highest

measure of skepticism. I urge the Court to apply such skepticism. Perhaps some depositors will be happy to elect to accept — sooner, rather than later, for example — repayments in USD. But I write to urge you not to compel such acceptance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Michael Fertik', with a stylized, cursive script.

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